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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,057	11/22/2000	Henning Von Spreckelsen	44257.830001	7735
25928	7590	01/29/2009	EXAMINER	
CHRISTOPHER J. KULISH, ESQ			NEWHOUSE, NATHAN JEFFREY	
HOLLAND & HART LLP			ART UNIT	PAPER NUMBER
P. O. BOX 8749			3782	
DENVER, CO 80201-8749				
MAIL DATE		DELIVERY MODE		
01/29/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* HENNING VON SPRECKELSEN  
and PETER M. McGEOUGH

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Appeal No. 2008-5593  
Application No. 09/701,057

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Mailed: January 29, 2009

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Before DALE M. SHAW, *Chief Appeals Administrator*  
SHAW, *Deputy Chief Appeals Administrator*.

ORDER REMANDING TO EXAMINER

On July 24, 2008, this application was electronically received by the Board of Patent Appeals and Interferences (hereinafter the "Board"). On September 9, 2008, this application was assigned Appeal Number 2008-5593 and a Docketing Notice was mailed on September 10, 2008. However, a review of the application reveals that the Reply Brief filed on January 14, 2008 includes new evidence.

In accordance with 37 CFR 41.41(a)(2):

“A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence...”

Because the reply brief filed January 14, 2008 was accompanied by an amendment, affidavit or other evidence, it will be treated as a request that prosecution be reopened before the examiner. Moreover, according to 37 C.F.R. § 41.50(2)(ii):

If such a reply brief is accompanied by an amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the examiner under paragraph (a)(2)(i) of this section.

*See also* MPEP §1208 for details.

## **CONCLUSION**

Accordingly, it is

ORDERED that this application be returned to the Examiner to:

(1) re-open prosecution to address the new evidence presented in Appellants' Reply Brief filed on January 14, 2008, and

(2) for such further action as may be appropriate.

If there are any questions pertaining to this Remand, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS/clj

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Application No. 09/701,057

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